

# **Exhibit M**

June 3, 2013

Mr. Richard M. Wiggins, Esq.  
Law Office of McCoy Wiggins Cleveland & O'Connor PLLC  
P.O. Box 87009  
Fayetteville, NC 28304

Re: City Grill Hospitality Group, Inc. vs. Nationwide Mutual Insurance Company  
(US District Court, Eastern District, Western Division, Civil Action  
No. 5: 12-CV-00610-F)

Dear Mr. Wiggins,

As requested, I am writing to provide a brief written summary of my findings and opinion in this matter in accordance with the assignment provided on 11 April 2013. The findings and opinion provided are based upon research of the available literature and technical specifications for the HME® IonIQ™ Wireless Drive-Thru Audio System installed at the loss structure at the time of the fire, participation in the 17 April 2013 joint destructive examination of evidence collected from the loss structure and retained in custody by Donan Engineering Company and SAFE Laboratories and Engineering Corporation, and review of photographs provided by Mr. James McLean III, Esq. on your behalf.

Significant findings from review of available literature for the HME® IonIQ™ Wireless Drive-Thru Audio System are summarized below:

The primary components of the system consist of 1) a communication base station with an external electrical power supply 2) rechargeable battery powered communication head sets and 3) a battery charging station with an external electrical power supply.

Review of the base station literature and technical specifications established the following significant information: The base station nominal physical dimensions are 9.75 inches height, 13 inches width and 3.5 inches depth. The maximum weight is 3.25 pounds. The voltage input from the external electrical power supply is 24 VDC +/- 2.5 V. The AC current input is 2.5 Amperes maximum. The exterior housing is manufactured from a plastic material. The front panel contains a single user interface display, which occupies an estimated 25 percent of the front panel surface. Two metal external male thread antennae connectors are integral to the housing upper right corner.

Review of the battery technical specifications established the headset batteries to be 3.6V Lithium ion.

Review of the battery charger technical specifications established the following significant information: The charger nominal dimensions are 7.6 inches length, 4.6 inches width and 2.6 inches depth. The weight is 1.5 pounds. The voltage input from the external electrical power supply is 16.5VAC.

Significant findings and observations from the joint destructive examination performed 17 April 2013 at SAFE Laboratories and Engineering Corporation located at 7424 ACC Boulevard in Raleigh, NC are summarized below:

Examination and documentation of a total of eighteen (18) individually packaged and identified exhibits was performed. The exhibits were comprised of six (6) collected from the loss structure by Mr. Terry Lacy of Donan Engineering Company Inc., and twelve (12) collected from the loss structure by Mr. John Cavaroc of SAFE Laboratories and Engineering Corporation. In addition to Mr. Lacy, Mr. Cavaroc, and myself, Mr. L. Henry Martini of Donan Engineering Company Inc., Mr. Steve C. Booth of Langham & Associates Inc., and Ms. Rachel E. Daly, Esq. of Womble Carlyle Sandridge & Rice were also in attendance.

Examination of the electrical wiring and components contained within the exhibits presented did not reveal any discernible evidence of a potential fire causing failure or defect. All of the thermal damage displayed by the exhibits was visually consistent in appearance with origination from exposure to externally applied heat as a result of the fire.

Inspection of the electrical components, wiring and circuit boards contained within the exhibits presented did not identify any that were either visually or dimensionally consistent with the HME® IonIQ™ Wireless Drive-Thru Audio System base station, base station subassemblies/circuit cards, battery charger or external power supplies documented within the available literature for the system.

Review of the photograph provided by Mr. McLean identified as "Photograph 33: Miscellaneous items recovered from rear drive-through service area." revealed the following significant observations:

The photograph provided was contained within a .PDF document. The raw .JPEG file that was used to generate the .PDF document was not provided, thus limiting the ability to perform a detailed examination and analysis.

None of the items visible in the photograph were consistent with any of the exhibits presented for joint destructive examination on 17 April 2013. Specifically, the physical dimensions, geometric shapes and apparent degrees of thermal damage and oxidation

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depicted in the photograph were distinctly different from any of the items contained within the exhibits presented.

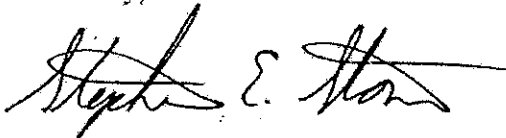
The second item from the left in the photograph is visually consistent in appearance with a base containing multiple circuit boards, comprised of a single large board and several smaller boards. The item appears to display significant thermal damage. The estimated physical dimensions of the item based on the size relative to the table and documents visible in the photograph, as well as the number, size and shapes of the circuit boards are generally consistent with those of the HME® IonIQ™ Wireless Drive-Thru Audio System base station.

Review of supplemental photographs provided by Mr. McLean contained in a .PDF file labeled as "Martini Photographsbn" revealed the following significant observations:

Photograph sheets "MWM04742" and "MWM04743" contain front and back images of the circuit boards visible in photograph 33 discussed above. The boards were noted to display severe thermal damage. Close examination of the photographs established that the size, shape, component layout and number of boards evident are consistent with those of the HME® IonIQ™ Wireless Drive-Thru Audio System base station.

If you have any questions, or I may be of assistance in another matter, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen E. Stone". The signature is fluid and cursive, with the first name "Stephen" being the most prominent.

Stephen E. Stone, PE

**STEPHEN EDWARD STONE, P.E.**

Stone Engineering Incorporated

P.O. Box 2368

Morehead City, NC 28557

**QUALIFICATIONS**

**Twenty-nine years experience;** Military Aircraft Propulsion Engineer; Maintenance Engineering, Design Engineering and Failure Analysis of aircraft engine systems and related components.

**Seventeen years experience;** Forensic analysis of marine, automotive, residential and industrial structures, systems and components.

**Professional Engineer,** licensed in North Carolina

**U.S. Coast Guard Licensed Master,** Steam or Motor Vessels of not more than 100 gross tons near coastal waters, with commercial towing endorsement

**USMC AV8B Harrier Aircraft Licensed Maintenance Ground Turn-up Operator;** (1988 to 2012)

**EDUCATION**

**B.S. Mechanical Engineering** (June 1984)  
Virginia Polytechnic Institute & State University  
Blacksburg, Virginia

**EXPERIENCE**

**Principal Engineer,** Stone Engineering Incorporated  
Morehead City, NC (1999 to present)  
Develop and execute comprehensive failure modes and effects based analysis, test and investigation programs for mechanical systems and components in support of product liability investigations. Perform forensic engineering failure analysis of marine, automotive, residential and industrial machinery, systems, structures and components following material failure for determination of cause. Perform engineering analysis and accident reconstruction of similar systems and components following involvement in fire or explosion to identify potential causal failures or defects. Utilize innovative technology and investigative techniques to ensure cost effective and timely solutions. Extensive experience in communicating complex engineering issues and providing persuasive argument to broad and diverse audiences. Qualified expert witness in mechanical engineering, mechanical systems analysis, and accident reconstruction, US District and Superior Courts.

**STEPHEN EDWARD STONE, P.E.**

**EXPERIENCE (continued)**

**Failure Analyst**, Langham & Associates Incorporated,  
Morehead City, NC (1996 to 1999)

Performed failure analysis of marine, automotive, residential and industrial machinery, systems and components following material failure for determination of cause. Performed engineering analysis of similar components following involvement in fire to identify potential fire causing failures or defects.

**Chief Design Engineer**, F35 Aircraft Joint Program Office (JPO)  
Short Take-off and Vertical Landing (STOVL) Propulsion System  
Propulsion and Power Division  
Naval Air Systems Team

Naval Aviation Depot, MCAS Cherry Point, NC (2010 to present)  
Provide technical leadership to JPO engineering team responsible for completion of design, development, verification, production and fleet support of F35B STOVL aircraft variant propulsion system. Provide direct technical leadership and oversight of development and execution of Failure Modes and Effects Analysis and Root Cause Corrective Action (RCCA) investigations of system and component failures experienced during development, validation testing, production and fleet operation to ensure appropriate design mitigation and air worthiness. Provide technical oversight with airworthiness signature authority for STOVL propulsion system to support F35B flight test program.

**Senior Engineer**, In-Service Engineering,  
Short Take-off and Vertical Landing (STOVL) Aircraft  
Propulsion, Propulsion and Power Division  
Naval Air Systems Team

Naval Aviation Depot, MCAS Cherry Point,  
North Carolina (2006 to 2010)

Established as resident Navy subject matter expert for In-Service Engineering issues pertaining to STOVL Gas Turbine Engine Propulsion Systems. Performed and directed engineering investigations of assigned systems, engines and related internal components involved in accidents or safety significant malfunctions. Routinely tasked to support Blue Ribbon Panel Design Reviews and lead complex RCCA failure investigations to achieve appropriate design and operational mitigation.

**STEPHEN EDWARD STONE, P.E.**

**EXPERIENCE (continued)**

**Senior Engineer, In-Service Engineering,  
Engine Controls and Diagnostics**

Propulsion and Power Division

Naval Air Systems Team

Naval Aviation Depot, MCAS Cherry Point,

North Carolina (1995 to 2006)

Established as resident Navy expert for In-Service Engineering issues pertaining to Gas Turbine Engine Controls and Diagnostic Systems. In addition to collateral program specific duties assigned, provide expertise in resolution of complex engine and engine control system performance and response characteristics for any U.S Navy aircraft program as required. Developed and fielded IR Thermography based diagnostic ground test program for STOVL propulsion system performance degradation. Completed Naval Aviation Selected Passenger Program, obtaining flight time in AV8B, T45, EA6-B and F/A-18 aircraft.

**Lead Engineer, Engine Controls and Diagnostics**

U.S. Navy T45 and U.S.M.C AV-8B Harrier Jet Programs

Naval Aviation Depot

MCAS Cherry Point, North Carolina

(1987 to 2006)

Final technical authority for all Maintenance Engineering aspects for assigned systems and components. Performed and/or technically managed Engineering Investigations for aircraft and engines experiencing engine transient performance, handling or response related discrepancies. Both of assigned aircraft programs are single engine high performance jet aircraft. Majority of investigations performed were flight safety significant, involving skills ranging from in-depth electrical and mechanical systems analysis to detailed forensic accident reconstruction and failure analysis. Lead investigating engineer in over 20 aircraft mishap investigations. Active participant in initiation, review and approval of design changes to assigned systems and components. Extensive experience in development of failure modes and effects based analysis in support of safety assessments, reliability centered maintenance plans and design verification test programs. Co-developed data logging system for AV-8B Digital Engine Control System to allow non-intrusive engine and control system performance analysis of aircraft in field.

**STEPHEN EDWARD STONE, P.E.**

**EXPERIENCE (continued)**

**Entry Level**, progressing to Journeyman Aerospace Engineer  
Naval Aviation Depot

MCAS Cherry Point, North Carolina  
(1984 TO 1987)

Assigned to U.S.M.C AV-8B Harrier Jet Program as a Propulsion Engineer. Provided Engineering support to fleet activities and Depot. Performed Engineering Investigations on discrepant engines and components returned from service. Acquired training and experience on build, test and maintenance support of turbofan, turboshaft, turboprop and turbojet gas turbine engines and related components. Developed extensive experience in engine build, machine and weld repair shop practice through development of variety of repair procedures for damaged engine hardware and components. Gained significant exposure to development and interpretation of X-ray, magnetic particle and fluorescent penetrant nondestructive inspection techniques.

**AWARDS/  
COMMENDATIONS**

1995 Recipient of Naval Aviation Propulsion Award  
(Fliedner Trophy) for Individual Engineering Excellence

Certificate of Commendation  
Commanding General, 2ND Marine Air Wing  
Fleet Marine Force, Atlantic  
"...for exceptional performance of duty while conducting the  
Engineering Investigation of class A mishap of AV-8B 162727..".  
Awarded May, 1992.

NAVAIR Research and Engineering Associate Fellow, inducted  
August 2007

2008 Recipient of Kerry Dale Award for Outstanding  
Achievement or Contribution to Aviation Safety in VSTOL Flight  
Training, Presented by RDML Eastberg 25 June 2008

**AFFILIATIONS**

American Society of Mechanical Engineers

**REFERENCES**

Available upon request

## **TESTIMONY RECORD**

DATE	EVENT	CASE TITLE	NUMBER	COURT JURISDICTION	LOCATION	CLIENT
11/9/10	Trial	John Dalton D/B/A J & E Salvage vs. Iron Ax, Inc	05-CVS- 1633	Superior Court	Onslow County, NC	Plaintiff

Case No: C-1302-01  
Client: Mr. Richard M. Wiggins

Enclosure 1

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**Stone Engineering Incorporated Fee Schedule**

Rate of compensation for all engineering work performed is \$175.00 per hour.

Rate of compensation for travel time is \$87.50 per hour.

Mileage rate for distance traveled from Morehead City NC office to job location and return is \$0.60 per mile.

Lodging, meals and other expenses as required are invoiced at cost.

Case No: C-1302-01  
Client: Mr. Richard M. Wiggins

Enclosure 2

## Service Retainer Agreement

This signed agreement confirms that Stone Engineering Incorporated has been retained by the undersigned (Customer) to provide consulting engineering, investigative or diagnostic services. The nature and scope of the services to be provided by Stone Engineering Incorporated shall be agreed upon between the parties prior to the acceptance of assignment and commencement of any work.

The undersigned hereby acknowledges that he or she has the authority to retain Stone Engineering Incorporated to provide the aforementioned services, and this retention has been made with the full consent of his or her law firm, company or client. The undersigned further acknowledges that payment shall be made in a timely manner in accordance with the following terms and conditions:

- 1) Payment in full is due within 30 days of the invoice date. Delinquent accounts are charged an additional administrative service expense of \$40.00 and 1.5 % each month of the amount past due. The Customer will be charged a \$50.00 fee in addition to any bank charges incurred for each check returned unpaid. The Customer agrees to pay all costs of collection whatsoever, including reasonable attorney's fees and court costs.
- 2) Customer assumes liability as principal for payment of any invoice rendered in connection with the services performed for or on behalf of the Customer.
- 3) Dependent upon the scope and nature of work requested, Stone Engineering Incorporated may require an advance retainer from the Customer as a condition of acceptance for an assignment. The amount of retainer will be determined by Stone Engineering Incorporated based upon a preliminary estimate of labor, travel costs and materials required to successfully perform the requested services. In the event that actual costs exceed the value of the initial retainer, Customer assumes liability for the full outstanding balance. In the event that actual costs are less than the value of the initial retainer, Stone Engineering Incorporated will refund the balance to the Customer within 30 days of file closure.
- 4) Exhibits accepted into custody of Stone Engineering Incorporated on behalf of the Customer will be placed in secure commercial storage upon completion of final report unless written disposition instructions authorizing either return or disposal have been provided by the Customer. In cases where the exhibit has been accepted into custody of Stone Engineering Incorporated indefinitely pending arrangement by the Customer of a future joint examination with other interested parties, the exhibit will be placed into secure commercial storage upon receipt. Commercial storage is provided based upon 100 cubic foot unit storage volume increments, invoiced at quarterly intervals.

5) Stone Engineering Incorporated provides secure commercial storage of exhibits as a convenience to the Customer, and accepts no liability for inadvertent loss, damage, theft or destruction arising from fire or natural disaster.

6) Infrared inspections and radiometric measurements performed are valid for the prevailing conditions at the time of inspection, and may be subject to errors associated with adverse environmental conditions or unknown structural and material anomalies. While Stone Engineering Incorporated shall apply due diligence and standard of care in identification and diagnosis of thermal anomalies detected through the inspection performed, no warranty is either expressed or implied concerning the accuracy of the inspection results or the presence of physical or material defects.

7) Stone Engineering Incorporated and the Customer agree that any disputes arising out of this agreement or the services or testing provided by Stone Engineering Incorporated will be governed pursuant to the laws of the State of North Carolina. The parties specifically waive any objection to, and hereby consent to, jurisdiction and venue in the courts of Carteret County, North Carolina.

By my signature below, I confirm that I have read and understood the above Service Retainer Agreement, and that I agree to abide by the stated and implied conditions for retaining the services of Stone Engineering Incorporated in this matter.

Firm/Company: McCoy Messer P.C.  
Business Address: 202 Foying Pl.  
City: Fayetteville State: NC Zip Code: 28305  
Phone Number: 910-483-8104 Fax Number: 910-483-0094  
Printed Name: James H. McCoy II Title: Member Manager  
Signature: [Signature] Date: 4-12-13

Please return completed form to:

Stone Engineering Incorporated  
P.O. Box 2368  
Morehead City, NC 28557  
Fax: 252 247-9258



P.O. Box 2368  
Morehead City, NC 28557  
Tax ID: 56-2111746

Date	File Number
6/3/2013	C-1302-01

Bill To
McCoy Wiggins Cleveland & O'Connor PLLC

Claim Number	Due Date
	7/3/2013

Description	Quantity	Rate	Amount
Research of HME IonIQ drive through system components per request of Trey McLean e-mail of 20 May 2013 to identify design and construction features and technical specifications 22 May 2013.	2	175.00	350.00
Comparison of items shown in "Photograph 33 Miscellaneous items recovered from rear drive-thru service area" supplied via e-mail from Trey McLean 23 May 2013 with exhibit photographs taken during destructive examination of 17 April 2013 and with base station technical specifications downloaded from HME for the purposes of identification of items shown in photograph 33 provided.	1	175.00	175.00
Review of Lacy and Martini photographs submitted 31 May 2013. 2 June 2013.	2	175.00	350.00
Preparation of letter summary of findings and associated Federal Rule 26 data 3 June 2013.	5	175.00	875.00
		<b>Total</b>	<b>\$1,750.00</b>